

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 13 September 2021 at 2.15 pm

Present

Councillors B G J Warren (Chairman)
G Barnell, E J Berry, Mrs F J Colthorpe,
L J Cruwys, Mrs S Griggs, F W Letch,
S Pugh and A Wilce

Apologies

Councillor(s) P J Heal, R F Radford and Mrs E J Lloyd

Also Present

Councillor(s) Mrs C P Daw, R M Deed and R Evans

Also Present

Officer(s): Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leburne (Operations Manager Legal and Monitoring), Dean Emery (Corporate Manager for Revenues, Benefits and Recovery), Simon Newcombe (Corporate Manager for Public Health, Regulation and Housing), Catherine Yandle (Operations Manager for Performance, Governance and Health & Safety), Mike Lowman (Building Services Operations Manager), Clare Robathan (Policy and Research Officer), Sarah Lees (Member Services Officer) and Sally Gabriel (Member Services Manager)

45 APOLOGIES AND SUBSTITUTE MEMBERS (00-04-15)

Apologies were received from Cllrs: P J Heal, Mrs E Lloyd and R F Radford.

46 HYBRID MEETING PROTOCOL (00-04-36)

The protocol for hybrid meetings was noted.

47 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00-05-37)

Members were reminded of the need to declare any interests when necessary.

48 PUBLIC QUESTION TIME (00-05-47)

The Chairman read a statement and questions on behalf of Mr Quinn:

My questions concern Agenda Item 9 (Possible Teckal Company) and Items 16/17 (Exclusion of the Public and Contract Dispute Settlement).

For item 9 – The possibility of a Teckal Company has been under consideration for a long time. Since January 2020, there have been two All-Member briefings from

Solicitors, an update report to Homes PDG and even a report to Cabinet that included the possible use of a Teckal Company to build properties at Post Hill.

But paragraph 3.1, of this report, shows that basic fundamental questions have still not been addressed: “What are we trying to achieve, are there other means?” and “How it could be used in conjunction with prevailing Housing Revenue Account legislation?”. Surely, these questions should have been covered already.

Homes PDG is said to be looking at the need for a Teckal vehicle to “help facilitate a step change in the delivery of social housing”. But, you do not need to create a new Teckal Company to build more Social Housing. Other companies are more than happy to tender for the work – including 3 Rivers (who have already built a Council housing development at Burlescombe).

Best Value is normally demonstrated and achieved by using the Public Tendering process. If the Council creates a Teckal company and awards contracts directly to it, then any proof of best value will be absent. This could be problematic.

The ‘Financial Implications’ section at the beginning of the report states “clearly” there will be “potential short term costs of setting up such a trading vehicle and longer term financial advantages” - but there is nothing in this report to back up this ‘throwaway’ statement. It is neither clear, nor justified in any way.

My questions are:

How will ‘Best Value’ be proven if the Council uses a Teckal Company?

When will the ‘short term costs’ and ‘longer term financial advantages’ of setting up a Teckal Company be given to Members?

For Items 16/17 – I understand that Members may wish to discuss this contract matter and your own actions, as set out in Appendix 2, without the public present.

However, the contents of Appendix 1 have already been published by the Liquidator and put into the public domain. You should not classify this public document as confidential and this Appendix should not be included in the Section 12A exemption.

My question is:

Please will Scrutiny Committee exclude Appendix 1 from the exemption motion?

The Chairman indicated that answers to the questions would be provided when the items were discussed.

49 **MINUTES OF THE PREVIOUS MEETING (00-09)**

The minutes of the previous meeting were approved as a correct record and **SIGNED** by the Chairman.

50 **DECISIONS OF THE CABINET (00-1025)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 31 August 2021 had been called in.

51 CHAIRMAN'S ANNOUNCEMENTS (00-10-30)

The Chairman had no announcements to make.

52 CABINET MEMBER FOR CONTINUOUS IMPROVEMENT (00-10-43)

The Cabinet Member for Continuous Improvement was invited to address the committee:

She informed the meeting that her role was to:

- Drive business and process improvement in services across the entire span of Council activity.
- Ensure that the responsiveness and agility demonstrated by the Council throughout the pandemic was harnessed to deliver better outcomes for residents as the Council transitioned to the new normal.
- Ensure that Members and Officers were engaged in the process and understood the outcomes she was trying to achieve; she had met with Directors and Officers to understand the deadlines and performance indicators across the Council's activity.
- She had been focussing on cases and issues that had gone past their deadline. To date she had closed 40 cases and was currently working on a further 24 cases
- The cases ranged from outstanding planning applications, planning enforcement issues, issues with waste, parking, environmental health, empty properties, waste, property services and many others.
- Member engagement in this role was vital and she thanked Members who had sent her outstanding cases.
- She would be grateful if Members could continue to pass her cases and to engage her in the issues they were hearing about from their residents. She was also grateful to the Officers who have been so helpful and worked hard to resolve these cases.

Consideration was given to the important work that was taking place within the Cabinet Member's portfolio, the volume of cases and that some of the issues raised were historic and had been unresolved prior to the pandemic. The number of cases dealt with in July and August and Members also considered whether the pandemic had caused some of the backlog with officers being away from the office.

The Cabinet Member was thanked for her time.

53 INFORMATION WITH REGARD TO THE POSSIBLE CREATION OF A TECKAL COMPLIANT COMPANY (00-26-00)

The Committee had before it a * report containing information with regard to the possible creation of a Teckal compliant company prior to it being considered by Homes Policy Development Group on 14th September 2021.

The Deputy Chief Executive (S151) provided a response to the question raised in public question time stating that there had been a delay since the subject of a Teckal Company had been raised 2 years ago. He had therefore highlighted the original principles within his report. He referred to a report that was presented to the Homes

Policy Development Group in July and the Member Briefing that had taken place at the beginning of September which had been well received. With regard to the outcomes, value for money was a consideration, the committee would consider the report today and make their views known (verbally via the Chairman) to the Homes Policy Development Group that was meeting the next day; a report would then be presented to the Cabinet who would consider the legal and financial information and then a recommendation would be made to Council.

The officer then outlined the contents of the report, highlighting the presentation attached to the agenda pack, which considered the legal framework for delivering houses through companies. He stated that the Council needed to be clear with regard to how it wanted a Teckal Company to work and requested that Members provide a steer to the direction of travel for such a company.

Consideration was given to:

- Whether the aims of 3 Rivers Development Limited should be reviewed and rather than the aim to make money for the Council could it be set up to provide social housing
- Why were the Council considering the setting up of a Teckal Company and what were the implications
- The aspirations of 3 Rivers and the plans for its future
- Did 3 Rivers have a role for the Teckal Company and had the Cabinet and 3 Rivers considered this?
- The issue of Right to Buy and had the impact on the HRA been considered
- The financial options had not been considered, there were affordability issues and implications from borrowing from the PWLB
- The benefits of a Teckal Company for MDDC and what would be the desired outcomes to include any drawbacks
- How would a Teckal Company work – how would it impact on the HRA, Right to Buy and 3 Rivers. Would a Teckal Company dodge the Right to Buy – there was a need to see some modelling on all of these issues
- Whether a Teckal Company would take over from the HRA with regard to replacement houses and would such a set up control the Right to Buy
- The need to explore the issues with other councils utilising a Teckal Company and receive further information with regard to this

It was agreed that the views of the committee, as set out above would be put before the Homes Policy Development Group the following day.

Note: *Report previously circulated copy attached to minutes.

54 **RECOMMENDATIONS FROM PLANNING ENFORCEMENT WORKING GROUP (00-51-48)**

The Committee had before it a *report of the Planning Enforcement Working Group, considering the operation and utilisation of enforcement powers and planning conditions and aimed to identify issues to inform service improvement.

The Chairman outlined the contents of the report thanking members and officers for their input into the final report and explaining that although the report did not detail individual cases, all the comments could be backed up with detailed evidence. The

Chief Executive and senior officers had been kept fully informed of the work that was taking place and some of the suggestions raised had already been implemented.

Consideration was given to:

- Recommendation 6 – a sub group of the Planning Committee be established to monitor issues within planning enforcement – concern was raised as to whether there would be a conflict of interest for members of the Planning Committee and whether the Planning Policy Advisory Group or the Development Delivery Advisory Group would be a better route for this work or whether this was a management role. Members views differed with regard to this as it was felt that the Planning Committee agreed conditions for applications and therefore it should be that committee that monitored enforcement cases
- Whether any of the recommendations had been costed, members were referred to recommendation 12
- The views of the Corporate Manager who informed the meeting the some of the recommendations had already been considered – a Tree Officer was now in post (Rec 9), officers had been provided with tablets (Rec 4), new officers/contractors had been recruited and adverts had been placed for a new officer (Rec 1) and that he was already considering a revised Local Enforcement Plan (Rec 8)
- Recommendation 5 was also being considered by officers
- Members role in monitoring performance and ensuring the activities of officers were monitored

As some concerns had been raised with regard to Recommendation 6, the Chairman indicated that he would deal with this initially, therefore:

The Chairman **MOVED** that Recommendation 6 be included in the list of recommendations to be put before the Cabinet; upon a vote being taken, this was approved.

It was therefore:

Recommended to the Cabinet that the following recommendations be considered and actioned:

1. That the Council recruit further resource for planning enforcement so the team includes either: a Principal Planning Enforcement Officer, two Planning Enforcement Officers and trained dedicated admin support; or a Principal Planning Enforcement Officer and three Planning Enforcement Officers.
2. That the Council establish a dedicated Solicitor with planning experience to act as a direct point of reference for the Planning Department, this could potentially be a shared service with another Local Authority.

3. That the Planning Department establish a process to enable proactive monitoring of planning conditions. That a proposal for how this will be achieved is brought to the Scrutiny Committee by the Chief Executive within a month of adoption of recommendation by Council.
4. That Enforcement Officers are provided with tablets with mobile telephone connection, linked to MDDC systems, to assist on site visits so that information can be retrieved on site and allow immediate contact and consultation with management if required.
5. That internal procedures be put in place so that discretionary powers be delegated down to appropriate levels to allow enforcement officers to make relevant decisions on site.
6. That a Subgroup of the Planning Committee be established to monitor issues within Planning Enforcement. This standing Enforcement Advisory or Working Group would review performance, deadlines and outstanding cases, and report back to the Planning Committee.
7. That the free planning advice line and/or the contact telephone number be reinstated with immediate effect (as outlined by the Customer Service Working Group).
8. That the Local Enforcement Plan be rewritten to consider the views and recommendations of this report and to take into account more enhanced versions from other Local Authorities, notably the East Devon model. That the new Enforcement Plan be submitted to the Scrutiny Committee for consideration prior to submission for adoption by Planning Committee.
9. That a Tree Officer is recruited as a matter of urgency, this could potentially be a shared service with another Local Authority.
10. That the Chief Executive bring forward a proposal for making information on enforcement action more publicly available.
11. That the Development Management Manager establish a process for case management to ensure cases are monitored and followed up, so that cases are not lost within or between Departments.
12. That an implementation plan is drawn up to cost the recommendations made in this report, and passed to Cabinet for consideration.

(Proposed by the Chairman)

Notes:

- i) Cllr Mrs F J Colthorpe requested that her vote against the inclusion of Recommendation 6 be recorded;

- ii) Cllr Mrs F J Colthorpe requested that her abstention from voting with regard to the recommendations to the Cabinet be recorded;
- iii) *Report previously circulated, copy attached to minutes.

55 **PERFORMANCE AND RISK (1-26-10)**

The Committee had before it and **NOTED** a * report of the Operations Manager for Performance, Governance and Health & Safety providing an update on performance against the Corporate Plan and local service targets for 2021-2022 as well as providing an update on the key business risks.

The officer outlined the contents of the report stating that this provided results to the end of July 2021

Consideration was given to:

- The lack of information with regard to 'Net additional homes provided' and 'New Social Rent Council Houses' – it was suggested that these figures be provided quarterly rather than annually.
- National and regional promotions – this target had been increased and would be reported on an annual basis, as the promotions did not lend themselves to monthly monitoring
- Council owned property occupancy rates at Westexe, Tiverton
- The whereabouts of the Crediton Town Centre Masterplan
- Council Tax collection rates
- The submission to the MHCLG of a detailed programme for delivering additional social rented homes and that it would be helpful for members to see the bid
- The mitigating actions in place with regard to the Economic Strategy

Note: *Report previously circulated, copy attached to minutes.

56 **BRIEFING PAPER - RETURN OF RIGHT TO BUY RECEIPTS (RTB) (1-48-14)**

The Committee had before it and **NOTED** a *briefing paper provided by the Deputy Chief Executive (S151) referring to the return of Right to Buy Receipts.

The Chairman stated that this briefing paper had been brought before the committee at his request so that members had all of the information that was available with regard to this issue.

The Deputy Chief Executive informed the meeting that there had been numerous queries with regard to the return of the Right to Buy receipts and that at that time there were no plans in place to deliver social housing units and that any receipt for RTB had to (at that time) be spent within 3 years with interest payable. As the Council had no plans to build social housing because of the risk of Right to Buy, the money was returned.

Consideration was given to:

- The now slightly relaxed rules, with 5 years to spend the monies and that further lobbying was taking place to relax the Right to Buy rules
- How the decision was made and whether members should have been informed with regard to the mechanism.

Note: *Briefing paper previously circulated, copy attached to minutes.

57 **FORWARD PLAN (1-59-17)**

The Committee had before it and **NOTED**, the contents of the *Forward Plan.

Queries were raised with regard to:

- The lack of Climate Change policies within the Forward Plan
- Plans and Options for Junction 27 had not been recorded
- Dates for consideration of the Cullompton Garden Village Masterplan
- Dates for consideration of the Cullompton Regeneration Masterplan.

It was agreed that information would be sought and forwarded to members of the committee.

Note: *Plan previously circulated, copy attached to minutes.

58 **SCRUTINY OFFICER UPDATE (2-08-28)**

The Scrutiny Officer informed the meeting that:

- The Spotlight Review on Motion 564 would take place at 10am on Thursday 28 October. A plan and suggested agenda would be sent out shortly to those Members who had volunteered.
- The Programming Panel would take place on Monday 20 September, chaired by the Chairman of Scrutiny Committee.
- The Chairman had written to Connecting Devon and Somerset to requesting attendance at a future meeting to discuss broadband in the District.
- Training for the Scrutiny Committee was been confirmed for Monday 4th October at 2pm – the officer requested that every effort be made to attend as this would be externally facilitated by the CFGS.

It was also requested that an update on the S106 Improvement Project be provided.

59 **WORK PLAN (2-12-18)**

The Committee had before it, and **NOTED** the *Scrutiny Committee work plan for 2021-2022.

The Chairman advised that Bio Energy was not on the work plan but a paper would be brought to the Committee in October.

Consideration was given to the 3 Rivers Development Limited process map for bringing items for scrutiny. The Chairman indicated that he had signed the process map off but understood that the committee may wish to consider it further.

Consideration was given to whether the Scrutiny Committee should just focus on the 3 Rivers Business Plan or should the committee consider the 3 Rivers accounts, therefore considering both organisational and financial risk.

It was **AGREED** that the following wording be altered to read – last bullet point: ‘Audit Committee will continue its regular review of risk and financial performance regarding 3RDL’.

60 **ACCESS TO INFORMATION EXCLUSION OF PRESS AND PUBLIC**

The Monitoring Officer provided a response to the question raised in Public Question Time stating that this matter involved a legal agreement and therefore the decision and any documents remained confidential.

Consideration was given to:

- The fact that part of the documentation was already in the public domain and available on the Companies House website and should therefore not be embargoed.
- The fact that a confidential settlement contract was in place
- If consideration of the item was discussed in public then paragraph 11.3 ‘Exclusion of Access to the public to meetings’ (within the Constitution) applied.
- Whether further legal explanation was required.

It was therefore **AGREED** that the next item of business be deferred to allow for further legal advice to be obtained.

61 **CONTRACT DISPUTE SETTLEMENT 2020-2021**

This item was deferred until the next meeting, see minute 60.

(The meeting ended at 4.50 pm)

CHAIRMAN